

## REMARKS

Claims 5-11 are pending. Applicants request reconsideration for at least the reasons discussed hereinbelow.

Claims 5-11 are rejected under 35 U.S.C. §102(a) over Lang et al. (WO 00/23013). Lang, WO/00/23013, corresponds to the U.S. Patent No. 6,524,341 which was made of record in the office action date March 20, 2003. Lang *fails* to describe a space maintainer wherein displacement of the two parts is created by rotational movement of the toothed wheel. In Lang, the displacement of the two parts is accomplished by hand manipulation and then a rotated locking device maintains the displacement.

The above amendment for further clarification of the structure of the present invention is not required for patentability because the prior claims already differ substantially from Lang..

The present invention is directed to a space-maintainer for inserting between two vertebral bodies, said space maintainer comprising:

- a sleeve-shaped first part having a longitudinal axis;
- a second part guided therein, the second part being displaceable in an axial direction relative to the first part;
- a device connecting the sleeve-shaped first part and the second part, the device comprising a first component having a toothed profile extending parallel to the longitudinal axis and a second component having a toothed wheel located for engagement

with the toothed profile of the first component, the rotational axis of the toothed wheel being perpendicular to the toothed profile.

wherein the first component is attached to one of the sleeve-shaped first part or second part and the second component is attached to the other of the sleeve-shaped first part or second part so that a rotary movement of the toothed wheel is converted into a movement displacing the second part relative to the sleeve-shaped first part in the axial direction for adjusting a total length of the sleeve-shaped first part and the second part,

as set forth in claim 5.

Lang fails to describe or suggest that a rotary movement of the toothed wheel is converted into a movement displacing the second part relative to the sleeve-shaped first part in the axial direction for adjusting a total length.

Thus, Lang *fails* to teach or suggest a space-maintainer for inserting between two vertebral bodies wherein the first component (having a toothed profile extending parallel to the longitudinal axis) is attached to one of the sleeve-shaped first part or second part and the second component (having a toothed wheel located for engagement with the toothed profile of the first component) is attached to the other of the sleeve-shaped first part or second part so that a rotary movement of the toothed wheel is converted into a movement displacing the second part relative to the sleeve-shaped first part in the axial direction for adjusting a total length of the sleeve-shaped first part and the second part.

The Examiner calls attention to column 3, lines 52-57 of the corresponding U.S.

6,524,341. However, the examiner fails to consider the full description of Lang.

Column 3, lines 48-62 state as follows:

when the present invention is inserted into the evacuated vertebral space, the device is **extended by expansion tongs** until the end plates come to rest against the adjoining, healthy vertebrae, and the tips of the end plates penetrate sufficiently deep into these vertebrae. For that purpose, the affixation ring can be rotated, beforehand, into the second angular position (i.e., position B). ***Once the implant has been adjusted to the required length***, the affixation ring is rotated into its first angular position (position A) by a bar, which is insertable into a bore in the affixation ring especially provided for that purpose. **In this manner, the prosthesis is locked** at the desired length.

It can be seen readily from the explanation of the affixation ring that it is merely a locking device. The affixation ring of Lang ***does not*** cause the extension of the device by **movement of the toothed wheel to convert into a movement displacing the second part relative to the sleeve-shaped first part in the axial direction for adjusting a total length of the sleeve-shaped first part and the second part**, as claimed in the present application. Further, even if the ring could be interpreted as the presently claimed toothed wheel (contrary to the understanding of a person skilled in the art), the rotational axis of the ring is parallel to the toothed profile on the part, not perpendicular to it.

Therefore, it is not seen how the present invention is anticipated by Lang. Nor is it seen how the present invention would have been obvious to one of ordinary skill in the art in view of Lang.

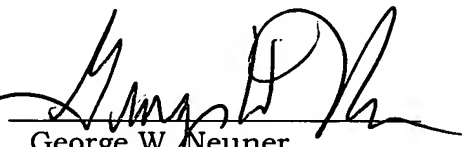
In view of the discussion above, it is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested. If the Examiner considers that issues of patentability still remain, Applicants request

that the Examiner call their attorney to discuss this matter to enable a better understanding of any remaining issues.

If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105**.

Respectfully submitted,

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